

**DOCKET NO. D-89-37-2**

**DELAWARE RIVER BASIN COMMISSION**

**Special Protection Waters**

**Mount Airy #1, LLC  
Ground Water Withdrawal  
Paradise Township, Monroe County, Pennsylvania**

**PROCEEDINGS**

This docket is issued in response to an Application submitted by Mount Airy #1, LLC to the Delaware River Basin Commission (DRBC or Commission) on April 12, 2006, for renewal of a water withdrawal allocation and review of a water withdrawal project approved by the DRBC on August 2, 1989 (Application). The Pennsylvania Department of Environmental Protection (PADEP) issued a draft permit on May 17, 2006 (Permit No. 4506502), pending approval by the DRBC.

The Application was reviewed for approval under Section 3.8 of the *Delaware River Basin Compact*. The Monroe County Planning Commission has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on September 27, 2006.

**A. DESCRIPTION**

1. **Purpose.** The purpose of this project is to supply up to 9.5 million gallons per thirty days (mg/30 days) of water to the docket holder's public supply distribution system through two new wells (Wells Nos. 1 and 2). The requested allocation is in addition to the existing allocations of 14 mg/30 days for golf course irrigation and 11 mg/30 days for snowmaking, approved by Docket No. D-89-37 on August 2, 1989. The surface water intake on Forest Hills Run approved by that docket is still being utilized for golf course irrigation, however snowmaking operations have ceased.

2. **Location.** The project wells are located in the Forest Hills Run Watershed, in the Long Run Member of the Catskill Formation.

Specific location information has been withheld for security reasons.

3. **Area Served.** The wells will supply the proposed 528,000 square feet Mount Airy Hotel and Casino with a potable water supply for domestic and fire protection purposes. For the purpose of defining Area Served, the Application is incorporated herein by reference consistent with conditions contained in the Decisions section of this docket.

#### 4. Physical features.

a. Design criteria. When placed into service, the docket holder anticipates an immediate average and maximum water demand of 4.86 mg/30 days and 7.26 mg/30 days, respectively. A ten year future water demand projection provided by the docket holder anticipates an increase in average and maximum water demands to 23.7 mg/30 days and 35.5 mg/30 days. The docket holder is seeking an initial allocation of 9.5 mg/30 days and plans to explore additional sources to meet the future water demands.

The property is served by a surface water intake on Forest Hills Run for golf course irrigation and formerly for snow making purposes, and approved by DRBC Docket No. D-89-37 on August 2, 1989. The current owner, Mt. Airy #1, LLC, will be required to submit a withdrawal application to the Commission for modification of Docket No. D-89-37. No surface water withdrawals are approved by this docket.

b. Facilities. The project wells have the following characteristics:

WELL NO.	DEPTH (FEET)	CASED DEPTH (FEET)/ CASING DIAMETER (INCHES)	PUMP CAPACITY (GPM)	FORMATION	YEAR DRILLED
1	700	63 / 10	175	Long Run Member of the Catskill	2006
2	700	63 / 10	220	Long Run Member of the Catskill	2006

All water service connections are metered.

All wells are metered.

Prior to entering the distribution system, the water will be treated with sodium hypochlorite for disinfection.

The project facilities are above the 100-year flood elevation.

The water system is not presently interconnected with any other distribution system.

c. Other. Wastewater is conveyed to the Mt. Airy #1, LLC sewage treatment facility most recently approved by DRBC Docket No. D-77-58-2 on December 7, 2005. The PADEP issued its most recent NPDES Permit No. PA0060054 on October 21, 2001 for this treatment facility. The treatment facility has adequate capacity to receive wastewater from the proposed project.

- d. Cost. The overall cost of this project is estimated to be \$3,350,000.

## B. FINDINGS

In 1992, the DRBC adopted Special Protection Waters requirements, as part of the DRBC *Water Quality Regulations* (WQR), designed to protect existing high water quality in applicable areas of the Delaware River Basin. One hundred twenty miles of the Delaware River from Hancock, New York downstream to the Delaware Water Gap has been classified by the DRBC as SPW. This stretch includes the sections of the river federally designated as "Wild and Scenic" in 1978 -- the Upper Delaware Scenic and Recreational River and the Delaware Water Gap National Recreation Area -- as well as an eight-mile reach between Milrift and Milford, Pennsylvania which is not federally designated. The SPW regulations apply to this 120-mile stretch of the river and its drainage area.

Article 3.10.3A.2.e.1). and 2). of the *Water Quality Regulations, Administrative Manual - Part III*, states that projects subject to review under Section 3.8 of the Compact that are located in the drainage area of Special Protection Waters must submit for approval a Non-Point Source Pollution Control Plan that controls the new or increased non-point source loads generated within the portion of the docket holder's service area which is also located within the drainage area of Special Protection Waters. The wells providing water supply to the Mt. Airy #1, LLC property are located within the drainage area to the Special Protection Waters. Since this project does entail additional construction and expansion of facilities (i.e., there are new or increased non-point source loads associated with this approval), the non-point source pollution control plan requirement is applicable at this time. Accordingly, Special Conditions II.y and II.z have been included in the Decision section of this docket.

The project is designed to conform to the requirements of the *Water Code* and *Water Quality Regulations* of the DRBC.

The DRBC estimates that the project withdrawals, used for the purpose of public water supply, result in a consumptive use of ten percent of the total water use. The DRBC definition of consumptive use is defined in Article 5.5.1.D of the *Administrative Manual – Part III – Basin Regulations – Water Supply Charges*.

The project does not conflict with the Comprehensive Plan and is designed to prevent substantial adverse impact on the water resources related environment, while sustaining the current and future water uses and development of the water resources of the Basin.

The docket holder conducted a 48 hour pumping test for each new well. New Well No. 1 was pumped at an average rate of 175 gallons per minute. Seven observation wells, one springhouse and two wetland gauges were monitored for the duration of the tests. Drawdown in

Well No. 1 was approximately 188.2 feet. Maximum drawdown among the observation wells was noted in new Well No. 2 (approximately 80 feet) which suggests a direct correlation between the two production wells. There were no impacts to the spring or wetlands observed during the test. New Well No. 2 was pumped at an average rate of 220 gallons per minute. Maximum drawdown among the observation wells was noted in new Well No. 1 (approximately 90 feet) which again suggests a direct correlation between the two production wells. There were no impacts to the spring or wetlands observed during the test. The docket holder plans to operate new Well No. 2 as the primary source and utilize new Well No. 1 as a backup or secondary source. The mutual interference between new Wells Nos. 1 and 2 suggests that the docket holder may not be able to operate both wells concurrently and yield the full combined pumping rate of 395 gallons per minute for a sustained period. The docket holder will adjust the withdrawal rates accordingly to meet demand, but is restricted to a total combined allocation of 9.5 mg/30 days as stipulated in the Decision Section of this docket.

At the project site, the docket holder is required to maintain the normal flow of Forest Hills Run downstream of the docket holder's dam by releasing water from the impoundment at a continuous rate of not less than 0.375 cubic feet per second (0.243 million gallons per day) as per PADEP (issued as PADER) Permit No. 45-243 issued on September 2, 1970.

### **C. DECISION**

I. Effective on the approval date for Docket No. D-89-37-2 below, the project and appurtenant facilities as described in the Section entitled "Physical features" above are approved pursuant to Section 3.8 of the *Compact*, subject to the following conditions:

a. Docket approval is subject to all conditions, requirements, and limitations imposed by the PADEP and such conditions, requirements, and limitations are incorporated herein, unless they are less stringent than the Commission's. The docket holder shall register with the PADEP all surface and ground water sources described in this docket in accordance with the Pennsylvania Water Resources Planning Act (Pennsylvania Act 220).

b. The wells and operational records shall be available at all times for inspection by the DRBC.

c. The wells shall be operated at all times to comply with the requirements of the *Water Code* and *Water Quality Regulations* of the DRBC.

d. During any 30-day period, the withdrawal from Well No. 1 shall not exceed 7.56 million gallons and the withdrawal from Well No. 2 shall not exceed 9.5 million gallons and the total withdrawal from all wells shall not exceed 9.5 million gallons.

e. Within 90 days of docket approval, the docket holder must submit a withdrawal application to the Commission for modification of existing docket No. D-89-37, for the surface water intake on Forest Hills Run, serving the existing golf course irrigation system.

f. At the project site, the docket holder is required to maintain the normal flow of Forest Hills Run downstream of the docket holder's dam by releasing water from the impoundment at a continuous rate of not less than 0.375 cubic feet per second (0.243 million gallons per day).

g. The wells shall be equipped with readily accessible capped ports and drop pipes so that water levels may be measured under all conditions. Existing wells are to be similarly equipped, where possible, with readily accessible ports and drop pipes as repairs or modifications are made at each existing well.

h. Upon completion of construction of the approved project, the docket holder shall submit a statement to the DRBC, signed by the docket holder's engineer or other responsible agent, advising the Commission that the construction has been completed in compliance with the approved plans, giving the final construction cost of the approved project and the date the project is placed in operation.

i. This docket approval shall expire three years from date below unless prior thereto the docket holder has commenced operation of the subject project or has expended substantial funds (in relation to the cost of the project) in reliance upon this docket approval.

j. The project withdrawals shall be metered with an automatic continuous recording device that measures to within 5 percent of actual flow. An exception to the 5 percent performance standard, but no greater than 10 percent, may be granted if maintenance of the 5 percent performance is not technically feasible or economically practicable. A record of daily withdrawals shall be maintained, and monthly totals shall be reported to the PADEP annually and shall be available at any time to the Commission if requested by the Executive Director.

k. Each new water service connection shall include a water meter in accordance with the DRBC's Resolution No. 87-7 (Revised).

l. In accordance with DRBC Resolution No. 87-6 (Revised), the docket holder shall continue to implement to the satisfaction of the PADEP, the systematic program to monitor and control leakage within the water supply system. The program shall at a minimum include: periodic surveys to monitor leakage, enumerate unaccounted-for water and determine the current status of system infrastructure; recommendations to monitor and control leakage; and a schedule for the implementation of such recommendations. The docket holder shall proceed expeditiously to correct leakages and unnecessary usage identified by the program.

m. The docket holder shall implement to the satisfaction of the PADEP, the continuous program to encourage water conservation in all types of use within the facilities served by this docket approval. The docket holder will report to the PADEP on the actions taken pursuant to this program and the impact of those actions as requested by the PADEP.

n. No water service connections shall be made to newly constructed premises with plumbing fixtures and fittings that do not comply with water conservation performance standards contained in Resolution No. 88-2 (Revision 2).

o. The docket holder shall continue to implement its Water Conservation Plan as approved by PADEP, and shall report to the PADEP on actions taken pursuant to this program and the impact of those actions as requested by the PADEP.

p. The docket holder shall implement to the satisfaction of the PADEP, a drought or other water supply emergency plan.

q. Sound practices of excavation, backfill and reseedling shall be followed to minimize erosion and deposition of sediment in streams.

r. No new water service connections shall be made to premises connected to sewerage systems which are not in compliance with all applicable effluent limits contained in State permits and the *Water Quality Regulations* of the Commission.

s. Nothing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project.

t. The docket holder is permitted to provide the water approved in this docket to the areas included in Section A.3. Area Served of this docket. Any expansion beyond those included in Section A.3. Area Served is subject to DRBC review and approval in accordance with Section 3.8 of the *Compact*.

u. A complete application for the renewal of this docket, or a notice of intent to cease the operations (withdrawal, discharge, etc.) approved by this docket by the expiration date, must be submitted to the DRBC at least 12 months prior to the expiration date below (unless permission has been granted by the DRBC for submission at a later date), using the appropriate DRBC application form. In the event that a timely and complete application for renewal has been submitted and the DRBC is unable, through no fault of the docket holder, to reissue the docket before the expiration date below, the terms and conditions of this docket will remain fully effective and enforceable against the docket holder pending the grant or denial of the application for docket approval.

v. The issuance of this docket approval shall not create any private or proprietary rights in the water of the Basin, and the Commission reserves the rights to amend, alter or rescind any actions taken hereunder in order to insure the proper control, use and management of the water resources of the Basin.

w. If the operation of this project significantly affects or interferes with any domestic or other existing wells or surface water supplies, or if the docket holder receives a complaint by any user of wells or surface water supplies within the zone of influence of the withdrawal, the docket holder shall immediately notify the Executive Director of any complaints by users of wells or surface water supplies within the zone of influence of the withdrawal, and unless excused by the Executive Director, shall investigate such complaints. The docket holder should direct phone call notifications of potential well or surface water interference or complaints of interference to the DRBC Project Review Branch at 609-883-9500, extension 216. Oral notification must always be followed up in writing directed to the Executive Director. In addition, the docket holder shall provide written notification to all potentially impacted users of wells or surface water supplies of the docket holder's responsibilities under this condition. Any well or surface water supply which is substantially adversely affected, or rendered dry or otherwise unusable as a result of the docket holder's project withdrawal, shall be repaired, replaced or otherwise mitigated at the expense of the docket holder. A report of investigation and/or mitigation plan prepared by a hydrologist shall be submitted to the Executive Director as soon as practicable. The Executive Director shall make the final determination regarding the validity of such complaints, the scope or sufficiency of such investigations, and the extent of appropriate mitigation measures, if required. The Executive Director may modify or suspend this approval, or require mitigating measures, pending additional review.

x. For the duration of any drought emergency declared by either Pennsylvania or the Commission, water service or use by the docket holder pursuant to this approval shall be subject to the prohibition of those nonessential uses specified by the Governor of Pennsylvania, the Pennsylvania Emergency Management Council, PADEP, or the Commonwealth Drought Coordinator to the extent that they may be applicable, and to any other emergency resolutions or orders adopted hereafter by the Commission.

y. Within 120 days of docket approval, the docket holder shall submit for approval by the Executive Director of the DRBC, a Non-Point Source Pollution Control Plan (NPSP) in accordance with Article 3.10.3A.2.e.1). and 2). of the *Water Quality Regulations*. The Executive Director can, for good cause, extend the date of the NPSP submission.

z. Prior to allowing connections from any new service areas or any new developments, the docket holder shall either submit and have approved by the Executive Director of the DRBC a Non-Point Source Pollution Control Plan (NPSP) in accordance with Section 3.10.3.A.2.e, or receive written confirmation from the Executive Director of the DRBC that the new service area is in compliance with a DRBC approved NPSP.

aa. The docket holder and any other person aggrieved by a reviewable action or decision taken by the Executive Director or Commission pursuant to this docket may seek an administrative hearing pursuant to Articles 5 and 6 of the Commission's *Rules of Practice and Procedure*, and after exhausting all administrative remedies may seek judicial review pursuant to Article 6, section 2.6.10 of the *Rules of Practice and Procedure* and section 15.1(p) of the Commission's *Compact*.

**BY THE COMMISSION**

**APPROVAL DATE: September 27, 2006**

**EXPIRATION DATE: September 27, 2016**